

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARRY GIRALDES, JR.,

No. C 08-4439 SI (pr)

Petitioner,

ORDER OF DISMISSAL

v.

DERRAL G. ADAMS, warden,

Respondent.

Larry Giraldes filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 concerning his 1993 conviction from the Santa Clara County Superior Court. This is not his first federal habeas petition challenging that conviction. His earlier habeas petition in Giraldes v. Ramirez-Palmer, No. C 98-2757 SI, was dismissed on November 3, 1998 because it was not filed before the expiration of the statute of limitations. He did not appeal from that decision.

A second or successive petition may not be filed in this court unless the petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). This requirement applies even when the previous petition was dismissed as barred by the statute of limitations. Murray v. Greiner, 394 F.3d 78, 81 (2d Cir. 2005).

Giraldes has not obtained the necessary order from the Court of Appeals for the Ninth Circuit permitting him to file a second or successive petition. This court will not entertain a new petition from Giraldes until he first obtains permission from the Court of Appeals for the Ninth

1 Circuit to file such a petition. This action is DISMISSED without prejudice to Giraldes filing
2 a petition in this court after he obtains the necessary order from the Court of Appeals for the
3 Ninth Circuit.


4 If Giraldes wants to attempt to obtain the necessary order from the Ninth Circuit, he
5 should very clearly mark the first page of his document as a "MOTION FOR ORDER
6 AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE
7 PETITION PURSUANT TO 28 U.S.C. § 2244(b)(3)(A)" rather than labeling it as a habeas
8 petition because the Ninth Circuit clerk's office is apt to simply forward to this court any
9 document labeled as a habeas petition. He also should mail the motion to the Ninth Circuit (at
10 95 Seventh Street, San Francisco, CA 94103), rather than to this court. In his motion to the
11 Ninth Circuit, he should explain how he meets the requirements of 28 U.S.C. § 2244(b).

12 In light of the dismissal of this action, the motion for appointment of counsel is DENIED
13 as moot. (Docket # 5.)

14 The clerk shall close the file.

15 IT IS SO ORDERED.

16 DATED: December 18, 2008



SUSAN ILLSTON
United States District Judge